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February 9, 2010

CHRISTOPHER R. INVIDIATA
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Via ECF & Overnight Mail

United States District Court
Eastern District of New York
225 Cadman Plaza
Brooklyn, New York 11201
Attention: Hon. Joseph F. Bianco, U.S.D.J.

Re: M.V.B. Collision Inc. d/b/a Mid Island Collision v. Allstate Insurance Company
Docket No. 07-CV-187 (JFB)

Dear Judge Bianco:

As you are well aware, we are counsel for the plaintiff in this matter, M.V.B. Collision, and make this correspondence in order to request permission to seek additional relief in the cross-motion which we have already discussed with counsel and your honor. Specifically, we ask that we be permitted to serve an amended report of our expert, Dr. Frederic Jennings, to take into account both a new survey conducted of area shops which supports his prior findings, and to address material culled out of the claims files already in the defendant's possession.

The new survey was conducted by Abacus Associates, and we received a signed copy of their report on February 9, 2010. The survey was designed to determine the average posted mechanical labor rate in the County of Nassau. While we do not believe that the defendant's complaints regarding the surveys previously utilized by Dr. Jennings had any merit, we felt that a broader survey, in line with their complaints, would perhaps ease their concerns, and allow this matter to transition to the trial stage more smoothly. The survey - a copy of which was provided to the defendants on February 9, 2010 via overnight mail - fell in line with Dr. Jennings prior findings, and serves to support his opinions. A copy of the survey report is enclosed for the Court's review.

Secondly, we have compiled an extensive list of all cases spanning the entire time period at issue here in which Allstate has failed to pay for items and procedures which were necessary to being a vehicle to its pre-accident condition. These items were claimed repeatedly as damages throughout the discovery stage of this matter, were testified to extensively by MVB's witnesses, and are culled entirely from documents and case files already in the defendant's possession. Although these issues have already been raised as elements of our damages, we have asked that Dr. Jennings review the material that we have prepared and assert whether or not it will alter his opinion in any matter. The material in questions is voluminous and has thus not been included with this letter, but is available for the court's review at any time should such be desirable, and has already been provided to the defendants via overnight mail.

Steven F. Goldstein, LLP

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We have yet to receive Dr. Jennings updated report, but expect to have it soon. Given that we have already planned motion practice in this matter, and that we have already received permission to make a cross-motion in this matter to allow us to amend our complaint to conform to the evidence, I would ask that this Court allow us leave to move for permission to serve an amended expert report, containing Dr. Jennings findings with regard to the new survey and the material compiled from the case files held by the defendant. There can be no possible prejudice to the defendants' herein, as on one hand the survey simply expands upon assertions already made and bolsters the findings already opined by Dr. Jennings, and on the other hand the material regarding disallowed procedures amounts to no more than a compilation of data already in the defendant's possession, and has already been the subject of extensive testimony and cross-examination.

Thank you for your time and attention. I remain as always,

Very truly yours,

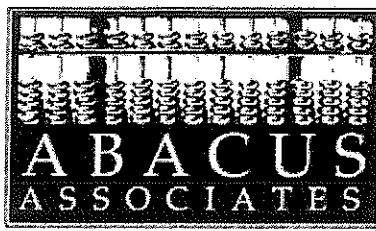

Christopher R. Invidiata

CRI/dyg

Enc.

cc: Seyfarth Shaw, LLP
Attorneys for Allstate Insurance Co.
620 Eighth Avenue
New York, New York 10018-1405

EXHIBIT "A"



David Greenberg
Steve F. Goldstein LLP
One Old Country Rd. – Suite 318
Carle Place, NY 11514

February 1, 2010

Dear Mr. Greenberg:

You have asked us to conduct a survey of auto repair businesses in Nassau County to determine the average posted mechanical labor rate in the County. To that end, we conducted a telephone survey of 103 repair shops in Nassau. This letter outlines our findings.

The average (mean) posted hourly mechanical labor rate for Nassau County is \$87.72, with shops reporting that they receive that rate 71% of the time. When we break out the interviews for repair shops in Rockville Center, the average mechanical labor rate is higher, at \$95.00, but the percentage of time shops receive that rate is lower, at 46% (one shop has a rate of \$115 and receives it 60% of the time, one shop has a rate of \$95 and receives it 0% of the time, and one shop has a rate of \$75 and receives it 80% of the time).

We then asked what the minimum rate is. What we were hoping to measure was the minimum mechanical labor rate, on the possibility that if they do not always receive a certain rate, they have a floor or minimum that they would be willing to accept. However, it is not clear to us that respondents fully understood the question, because we got a very wide range of responses from \$10 to \$120. This range suggests that some respondents may have understood what we were asking to be a minimum mechanical rate and others may have understood it be a minimum labor rate for some other service. We can never know for certain just from this data, but we suspect that to be the case. Countywide the mean rate we received from this question is \$70.58.

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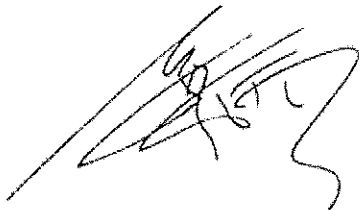
When we asked if they ever have work for which they charge more than the labor rate, 18% said yes. Of those, they tended to charge more when the work required larger vehicles (e.g., heavy duty trucks), more expensive equipment (e.g., computerized work) or jobs that "take more time." The verbatim responses regarding the kind of work and the reasons why can be found at the bottom of this memo.

When we asked how much is their typical mark-up on parts, a solid majority (74%) of those who responded said their mark-up fell between 20% and 40%, with the average percentage mark-up being 30.5%.

Twenty-two percent (22%) of shops said they performed at least some auto-body repair, and of those shops we asked if they had a body, paint or frame hourly labor rate. Of those that do, the mean hourly body rate is \$68.00, the mean hourly paint rate is \$59.60, and the mean hourly frame rate is \$73.75.

We believe the results reported here accurately depict the average hourly posted labor rates in Nassau County as of January 2010. We express this opinion with a reasonable degree of statistical probability. Explanations of methodology for this survey can be found as an attachment to this letter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Mark Watts', with a stylized, cursive script.

Mark Watts, Ph.D.
Partner, Abacus Associates

Survey Methodology

Time frame and practices. The survey was conducted from Thursday, January 21 to Friday January 29, 2010. All interviews were conducted during business hours.

Surveying was conducted on the telephone by trained interviewers working for BRG Research in Provo, UT (<http://www.brgresearchservices.com/>). Interviewers for this survey had no knowledge of the purpose of these surveys nor the intended use of the data. At all steps of the survey process, care was taken to ensure objectivity. The development of the instrument and the survey sample, the procedures and conduct of the interviewers, and the analysis and reporting of the data all met the standards and best practices of the profession.¹ The statistics used in the analysis are standard and highly accepted in the field. The data accurately reflect the concepts we are trying to measure, and the statistics reported in this memo accurately reflect the data.

The survey sample and population. The sample comes from the list of licensed motor vehicle repairers that is kept by the New York Department of Motor Vehicles (DMV). This list does not include phone numbers, so we appended phone numbers to the data base using the market database firm CSS Direct. The match rate of phone numbers was 85.6%, which is a very good rate in our experience.

Out of 1186 repair shops on our list, we ended up with 1017 with working phone numbers. We suspect many of those shops without phone numbers are no longer in business. Of the remaining shops, 5% turned out to have a disconnected, wrong, or some form of non-working phone number. Another 7% did not conduct auto repair. We only interviewed shops who would answer the most important measure—their posted mechanical labor rate. If they did not know or refused to answer this question we did not continue with the interview.

Response rates. Using AAPOR's accepted standards for cooperation rate calculation, the cooperation rate for the sample is 37%.²

Confidence Interval. For our critical measure—the hourly mechanical posted labor rate—given a standard deviation of \$16.04, a mean of \$87.72, a sample size of 103, and an estimated population of 1000 active mechanical repair shops in Nassau County, we calculate the 95% confidence interval to be +/- \$2.90. That is, we can say with 95% confidence (the

¹ As defined by The American Association for Public Opinion Research. "Code of Professional Ethics and Practices" (<http://www.aapor.org/standardsethics>) and "Best Practices for Survey and Public Opinion Research" (<http://www.aapor.org/bestpractices>). (AAPOR: Lenexa, KS) 2006.

² American Association for Public Opinion Research. Standard definitions: Final Dispositions of Case Codes and Outcome Rates for Surveys. (AAPOR: Lenexa, KS). 2004.

widely accepted measure of probability) that the true average mechanical hourly posted labor rate for all shops is somewhere between \$85.82 and \$90.62.

Survey instrument. Efforts were made to ensure that questions in this survey were clear, precise, and non-leading. We were not measuring opinion, but objective facts—posted labor rates and parts mark-up.

Survey Questions and Responses

Nassau County Repair Shops
January 22 to January 29, 2010
N=103

[INTRODUCTION]

Hello, my name is _____ and I am conducting some very brief research for the auto repair industry. I just need to ask just a couple of very quick questions that should be easy for you to answer.

Q1. First, what is your posted hourly mechanical labor rate—that is the hourly labor rate that the state of New York requires you post on your wall? [IF THEY SAY THEY HAVE MORE THAN ONE, SAY "I AM LOOKING FOR A GENERAL OR TYPICAL POSTED MECHANICAL LABOR RATE"]

Mean= \$87.72

Less than \$60	6%
\$60.00 to \$69.99	7%
\$70.00 to \$79.99	11%
\$80.00 to \$89.99	18%
\$90.00 to \$99.99	45%
Over \$100	14%

Q2. What percentage of the time would you estimate that you get the posted labor rate?

Mean= 70.6%

Less than 50%	15%
50% to 79%	26%
80% to 99%	18%
100%	25%
[DON'T KNOW]	13%
[REFUSED]	3%

Q3. What is your minimum labor rate?*

Mean= \$70.58

Less than \$60	27%
\$60.00 to \$69.99	3%
\$70.00 to \$79.99	10%
\$80.00 to \$89.99	12%
\$90.00 or greater	27%
[NO MINIMUM RATE]	18%
[DON'T KNOW]	4%

*For those who said in Q2 that they got their rate in Q1 100% of the time, Q3 was skipped and the rate from Q1 was used for Q3.

Q4. Do you ever have a type of work where you charge more than the posted labor rate?

Yes 18%
 No 81% [SKIP TO Q6]
 [NOT KNOW] 1% [SKIP TO Q6]
 [REFUSED] 0% [SKIP TO Q6]

Q5. What type of work would that be and why do you charge more?

_____ (For the verbatim 19 responses see the next page)

Q6. How much is your typical mark-up on parts?

Mean=30.5%

Less than 25% 19%
 25% to 30% 31%
 More than 30% 24%
 [DON'T KNOW] 21%
 [REFUSED] 4%

Q7. Does this business do any auto body repair?

Yes 22%
 No 78% [END SURVEY]
 [NOT KNOW] 0% [END SURVEY]
 [REFUSED] 0% [END SURVEY]

Q8. [IF "YES" ON Q7] In terms of dollar amount, how much of your business would you estimate is auto body repair—Nearly all, a majority, about one half, some but less than one-half, or hardly any?

Nearly all 12%
 A majority 3%
 About one half 3%
 Less than half 3%
 Hardly any 0% [END SURVEY]
 [NONE (including "No" in Q7)] ... 78% [END SURVEY]
 [NOT KNOW] 1% [END SURVEY]
 [REFUSED] 1% [END SURVEY]

Q9. For my final question, I am going read you a few categories and ask if you have a separate posted labor rate for that category?

Body Labor Rate

Mean=\$68.00 [n=14]

Paint Labor Rate

Mean=\$59.60 [n=15]

Frame Labor Rate

Mean=\$73.75 [n=12]

Verbatim responses for the 19 respondents who were asked Q5. "What type of work would that be and why do you charge more?"

- Older cars when there is corrosion and rust. It takes more time.
- The electrical, because it takes longer to do.
- Mechanical chase frame straightening. It takes more time.
- Occasionally something that requires more than the average labor but it's unusual
- Engine job—parts plus labor plus diagnostics.
- Frame related work, custom paint work, some mechanical and large trucks. (why) it's more time consuming labor and it takes up space in my shop so I charge more.
- Box trucks its heavier, bigger and there is more labor involved.
- Electrical.
- Uncommonly done jobs, done on lack of experience and labor time.
- Diagnostics.
- Electrical diagnostics. Because we put more hours on it. It takes longer to do.
- Hydraulics, ball joints anything that is more complex and takes more time to work on.
- For trucks, fancy cars and high performance cars like Corvettes. (why charge more) there is more technical involvement.
- Computerized work. The equipment is more expensive and the books are more expensive so we charge more.
- It's heavy duty trucks. Because it's just a different kind of labor on it.
- Diagnostic time.
- Transmissions. There is more time involved.
- Time and materials
- Mechanical is 85. It's different.